

Louisiana Law Review

Volume 16 | Number 2

The Work of the Louisiana Supreme Court for the

1954-1955 Term

February 1956

Forum Juridicum: The Role of the Judge in the American Republic

Albert Tate Jr.

Repository Citation

Albert Tate Jr., *Forum Juridicum: The Role of the Judge in the American Republic*, 16 La. L. Rev. (1956)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol16/iss2/24>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

Forum Juridicum

The Role of the Judge in the American Republic*

*Albert Tate, Jr.***

We have just heard memorials to loved and respected men. We here pay our respects to them not only as friends we loved, but also as judges of our courts. To them was entrusted a portion of the judicial power of our republic and our state, and they used it well.

So long as our people have been settled here, their freedom and property have been protected in courtrooms like this, and their disagreements have been resolved therein under orderly processes administered through conscientious officials such as those we honor. I daresay that for so long as the American Republic endures, not far from this spot there will be a courtroom, just such as this, and there will be men, just such as you and I, dedicated to the same ideals of due process and liberty under law. And though procedures may have changed, and so, too, rules of law and subjects of litigation — though the language they will speak be as distant from modern English as the tongue we comprehend is from the speech of the Angles and Saxons — these men will be brother to us in mind and in spirit.

Like us, they will do their best as attorneys to serve their clients to the furthest ethical limit of their abilities. Like us they will do their best also to serve as officers of the court, assisting the judicial process to render justice, which is indeed the function of our courts and the attempted duty of the judges composing them.

Particularly within the profession of law, the symbol of the justice for individuals expressed by our constitutions is this man who has the duty to serve as judge.¹

*Remarks delivered at Memorial Exercises at opening of the Ninth Judicial District Court, Rapides Parish, September 6, 1955.

**Judge, Court of Appeal, First Circuit.

1. As a very junior member of the judiciary, it is probably unnecessary for me to add that these remarks concerning the nature and the role of the judge are not based on experience, nor do they apply to your speaker insofar as I praise judicial virtues, except as an aspired goal.

Now this man is a lawyer, and talks and thinks like a lawyer. But in his official capacity, he is trying to act neither like the man he is, nor the lawyer he was, but as the medium through which the law expresses itself; the law which lived before he was born and will endure milleniums past his dust; the law which is the eternal human grappling with the ever-changing human problems and the attempting to resolve them objectively and both humanely for the individual and wisely for society.

However well we may know him, however familiarly we laugh and joke with or at him just a few seconds before court opens, when the judge ascends the bench in formal court he somehow loses his identity as that close friend, or even perhaps detested foe, and temporarily becomes a manifestation of something far greater than any human being: the judicial power of the American people, expressing through the court their devotion to eternal justice. It is true that that manifestation may have human characteristics — he may be cranky, he may be jovial, he may be brilliant, or perhaps he may not be persuaded by our logic. But nevertheless when he speaks, it is not Judge John Doe to whom we listen respectfully and whom we heed — it is an organ of the law.

Whence comes this power of the judiciary? It has no armies; it has no funds, nor can it raise them. For instance, recently the Supreme Court ordered the President of the United States to release steel mills seized by him in his no doubt sincere belief that such seizure was essential to our Korean war effort.² The President, this chief of the American state with a mandate direct from the American people to lead them, this commander in chief at least theoretically of millions of troops, obeyed those frail sheets of paper and those impalpable words issued by those nine equally fallible human beings.

President Jefferson inveighed against what he felt to be the arrogant assumption of judicial power and judicial supremacy by the Court under Chief Justice Marshall. Jefferson felt, and perhaps correctly, that his own interpretation of the constitutional intention in that sprouting-time of our republic was sounder than that of Marshall. But Jefferson did not flout the decrees of the Court.

These and other Presidents, great in power and in support

2. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

from the people, nevertheless felt compelled by their constitutional oath to obey decrees, popular or unpopular, which the Presidents felt to be erroneous and unwise with probably as much logic as the courts. They did so, not out of respect for the human beings comprising the Court, but from respect for the Court itself as the interpreter of the Constitution of the American people — not just those living now, but also our forefathers, and the generations of Americans yet to live in these lands and under this flag.

Whence comes this power of the judiciary? It comes from you and me, the American people. We have been satisfied that, by and large, justice is rendered through our courts. We accept judicial decrees as proceeding not from men, but from the law itself. Essentially, the power of our judiciary springs from the hearts of the American people, who feel that the courts express their own eternal thrust for justness.

Respect for the judicial decree is recognition that it is the decree of the entire people, though expressed through humans temporarily robed with the judicial power of the nation. If our people felt that the decrees rendered were arbitrary edicts rendered at the whim of the mortal writing them, then perhaps neither regiments nor armies could enforce them.

But our people recognize that their courts are the conscience of the *eternal* American people, not of any temporary majority existing at any given time; and accordingly, in respecting the courts' decrees, we respect the eternal ideal of America.

No matter how evil the crime, how reprehensible the individual committing it, how severe a penalty is justified — the courts exist to guarantee the fair trial granted by the Constitution, though it delay execution of a just sentence; yes, even though the guilty escape. The courts so function not to help the criminal individual delay or escape his deserved punishment. They do so as the conscience of the American people and the American Constitution, to protect all individuals, living and to come. If human officials can ignore constitutional rights of the wicked or the unpopular, they can ignore them for any other individual. When rule by law and orderly process does not protect *everyone*, then the liberty, life, or property of *no* one is protected.

This is the heritage we have received from the past, enrich-

ing our lives and giving us our present greatness as a nation; this is the heritage we must pass on to those who follow.

In recent months, a veritable fury of angered attack has been voiced against the highest tribunal of our land, the United States Supreme Court. Now we may feel and say a judicial decision is unwise and unjustified. But as citizens, and particularly as lawyers, we should abhor attacks on the persons, the integrity, or the sincerity of that or any other court, in the discharge of their constitutional duties. The truly reprehensible suggestion has been voiced recently that the members of the Supreme Court should be impeached because we disagree with their decision!

My friends, we as lawyers, as conservators of the rights guaranteed to our people by our Constitutions through our courts, have an especial and an urgent duty to defend our courts against such attack in time of public passion. Such attacks are attacks on our Constitution itself and on our system of government; they arrogantly seek to intimidate or to destroy one of the three equal branches of our government. And make no mistake about it, when we destroy popular respect for the courts as attempted impartial interpreters of the law, we destroy the courts themselves. For the power of the judiciary is based upon popular respect for it.

Now, by this, I do not mean to defend any theory that courts are never wrong or that courts may base their decisions on their personal opinions as men, in total disregard of general rule and previous precedent; or that courts are entitled at their whim to obstruct the will of the people as expressed through their legislatures, whether wise or unwise. It is of course also proper for us to criticize judicial decrees we think unwise, and to seek to change them or evade their unwise effects by legal and constitutional means.

But we must always abhor and repel vile personal attacks on our courts, and intimidation of them. These are the truly subversive methods of those who do not believe in our constitutional government and its capacity to resolve the conflicting demands and aspirations of our people with satisfaction to all; of those who do not believe what most of us here believe, that the eternal aspirations of the American people for liberty and justice are expressed through an independent judiciary, which is constitu-

tionally entrusted with the protection of the liberty, the lives, the property of all individuals residing in our land.

And so today we reverence not only our departed friends, but through them the judicial power they exercised in the name of all the American people, present, past, and future. In ceremonies such as these, in time beyond our contemplation, the members of the legal profession will gather to pay their respects to the eternal ideal of justice, and both we and those who have already departed will in communion with them in those solemn moments render our silent account to our God of our joint stewardship of the heritage of American justice.